

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

LeRoy Koppendraye
Marshall Johnson
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Gregory Scott

Chair
Commissioner
Commissioner
Commissioner
Commissioner

In the Matter of a Commission Investigation
into ILEC Unbundling Obligations as a Result
of the FCC Triennial Review Order

ISSUE DATE: November 18, 2003

DOCKET NO. P-999/CI-03-961

ORDER ENDORSING MULTI-STATE
FORUM, ENCOURAGING
PARTICIPATION, AND ADOPTING
SCHEDULE AND PROCEDURAL
REQUIREMENTS

PROCEDURAL HISTORY

On February 20, 2003, the Federal Communications Commission (FCC) adopted its Triennial Review Order,¹ which revised the federal rules governing the obligations of incumbent local exchange carriers to unbundle certain elements of their networks and make them available to competitive carriers at cost-based rates.² On August 21, 2003, the FCC released the text of that Order. The effective date of the Order and the new rules is October 2, 2003.

In the Order the FCC refined its definition of the “impair” standard, the touchstone in determining which network elements must be unbundled, and explained the significance of other policy factors in reaching unbundling determinations. For some network elements, such as the high-frequency portion of the loop and “greenfield” fiber loops, the agency made binding nation-wide findings and set nation-wide rules on incumbent local exchange carriers’ unbundling obligations.

¹ Report and Order and Order on Remand and Further Notice of Proposed Rulemaking, *In the Matter of Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, CC Docket No. 01-338, Released August 21, 2003.

² 47 U.S.C. §§ 251(c)(3), 252(d)(1); 47 C.F.R. § 51.307 *et seq.*

For other network elements, the agency adopted a rebuttable presumption for or against unbundling, and delegated to state commissions the authority to make final determinations, applying federal standards. And for other network elements, the agency articulated the principles to be applied in making unbundling determinations, found that these determinations required fact-intensive, local evidentiary inquiries, and delegated the responsibility for those inquiries to the state commissions. The FCC required that these state proceedings be completed within nine months of the effective date of the Triennial Review Order.³

On October 3, 2003 the Commission issued its Order Opening Investigation and Notice and Order for Hearing in this case, beginning the nine-month proceeding required under the Triennial Review Order. Among other things, that Order required the parties to respond to a list of questions intended to help focus and expedite the investigation. One of those questions was the following:

Low Cost, Batch Hot Cut Process

Please comment on a low cost, batch hot-cut process that could be used in Minnesota by Qwest for switching customers from Qwest switches to requesting carrier switches. Also, please comment on whether this process should be developed as a regional OSS process, with certification and implementation by individual states, rather than on a state by state basis.

On October 31, 2003, three parties to this case – Qwest, MCI, and AT&T – filed a Joint Motion for Adoption of Batch Hot Cut Forum (Joint Motion). The motion, which is attached, argued that it would benefit the competitive market and all competing carriers to have a single, uniform batch hot cut process for all states within the Qwest region. The parties therefore proposed to convene a multi-state forum to attempt to develop a uniform process, with the forum’s work product coming to each state commission as it completed its nine-month proceeding under the Triennial Review Order.

On November 12, 2003, Qwest filed its Proposal for Region-Wide Batch Loop Conversion Process.

On November 13, 2003, the Joint Motion came before the Commission. No one opposed the motion.

FINDINGS AND CONCLUSIONS

The Commission concurs with the parties that a multi-state forum on the batch hot cut process appears to offer major efficiencies, as well as opportunities to pool the expertise of regulators, public advocates, and industry personnel throughout the Qwest region.

³ The FCC also set a 90-day deadline for state petitions to rebut, as to specific local markets, the agency’s presumptive, nation-wide finding that competitive local exchange carriers are not impaired in serving enterprise customers without unbundled access to local circuit switching. This Commission has opened a separate proceeding to investigate the claims of two carriers that there are specific markets in Minnesota where impairment should be found. Docket No. P-999/CI-03-960.

The Commission will grant the Joint Motion. In so doing, the Commission endorses the multi-state forum, strongly encourages interested parties to actively participate, and adopts the schedule and procedural requirements proposed by the moving parties, with one exception. The exception is that parties' comments on or counter-proposals to Qwest's batch hot cut proposal shall be filed within seven days of the date of this Order, not by November 18, as the Joint Motion proposed.

The Commission will so order.

ORDER

1. The Commission grants the Joint Motion for Adoption of Batch Hot Cut Forum, copy attached, with the exception set forth in paragraph 2.
2. The Commission endorses the multi-state forum, strongly encourages interested parties to actively participate, and adopts the schedule and procedural requirements proposed in the motion, with the exception of the deadline for comments on or counter-proposals to Qwest's hot batch cut proposal. Those comments or counter-proposals shall be filed within seven days of the date of this Order.
3. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Burl W. Haar
Executive Secretary

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